

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN

IAN DANIEL KOCH,

Plaintiff,

v.

Case No. 18-C-579

WARDEN SCOTT ECKSTEIN, et al.,

Defendants.

DECISION AND ORDER

Plaintiff Ian Daniel Koch filed this civil rights action pursuant to 42 U.S.C. § 1983, alleging that his civil rights were violated. On September 28, 2018, the defendants filed a Suggestion of Death pursuant to Rule 25 of the Federal Rules of Civil Procedure, indicating that Koch passed away on September 21, 2018. On October 10, 2018, defendants' counsel filed a letter with the court indicating that she spoke with and emailed copies of the complaint, screening order, and scheduling order to Koch's brother, who is his next of kin, but was unsure if he intended to pursue his brother's lawsuit.

Rule 25 addresses the substitution of a party upon death and provides:

If a party dies and the claim is not extinguished, the court may order substitution of the proper party. A motion for substitution may be made by any party or by the decedent's successor or representative. If the motion is not made within 90 days after service of a statement noting the death, the action by or against the decedent must be dismissed.

Fed. R. Civ. P. 25(a)(1). The defendants filed a Suggestion of Koch's Death on September 28, 2018. As a result of the filing, Koch's successor or representative was required to file a motion for

substitution of party on or before December 27, 2018. To date, no motion to substitute has been filed. Consequently, Koch's claims must be dismissed.

IT IS THEREFORE ORDERED that Plaintiff Ian Daniel Koch's claims are **DISMISSED WITH PREJUDICE** pursuant to Federal Rule of Civil Procedure 25(a)(1). The Clerk is directed to enter judgment accordingly.

Dated this 29th day of January, 2019.

s/ William C. Griesbach
William C. Griesbach, Chief Judge
United States District Court